Attorney general orders review of state secret claims
Holder seeks to ensure legal use of privilege

WASHINGTON - Attorney General Eric Holder has ordered a review of all claims of state secrets, which were used under the Bush administration to shield controversial antiterrorism programs from lawsuits.

The so-called state secrets privilege was invoked by the previous administration to stymie a lawsuit challenging the government's warrantless wiretapping program.

"The attorney general has directed that senior Justice Department officials review all assertions of the state secrets privilege to ensure that is being invoked only in legally appropriate situations," Justice Department spokesman Matt Miller said yesterday.

"It's vital that we protect information that if released could jeopardize national security, but the Justice Department will ensure the privilege is not invoked to hide from the American people information about their government's actions that they have a right to know," Miller said.

Meanwhile, the chairman of the Senate Judiciary Committee is proposing a "truth commission" to investigate US abuses.

"We need a fair-minded pursuit of what actually happened," said Senator Patrick Leahy, who proposes a "truth commission" to investigate US abuses.
"truth commission" to investigate abuses of detainees, politically inspired moves at the Justice Department, and other decisions made during the Bush administration.

Senator Patrick Leahy, Democrat of Vermont, said the primary goal of the commission would be to learn the truth rather than prosecute former officials, but said the inquiry should reach far beyond looking for misdeeds at the Justice Department under Bush to include matters of Iraq prewar intelligence and the Defense Department.

Leahy outlined his suggestion for a "truth and reconciliation" commission during a speech at Georgetown University yesterday.

"I'm doing this not to humiliate people or punish people but to get the truth out," he said.

The panel he envisions would be modeled after one that investigated the apartheid regime in South Africa. It would have subpoena power but would not bring criminal charges, he said.

Among the matters Leahy wants investigated by such a commission are: the firings of US attorneys, treatment and torture of terror suspect detainees, and the authorization of warrantless wiretapping.

"Rather than vengeance, we need a fair-minded pursuit of what actually happened" during the Bush administration, Leahy said.

Some Democrats have called for criminal investigations of those who authorized certain controversial tactics in the war on terror. Republicans have countered that such decisions made in the wake of the 2001 terror attacks should not be second-guessed.

Representative Lamar Smith of Texas, the senior Republican on the House Judiciary Committee, said no good purpose can be served by Leahy's suggestion, and called it a political scheme "to unjustly malign former Bush administration officials."

A long-running commission-style inquiry could help Democrats politically, if it kept reminding voters of unpopular decisions made by Bush and his supporters.

Yet some Democrats in Congress have already suggested that the current criminal investigation into the firing of US attorneys may serve as a shield to prevent damaging facts about Republican officials from coming to light.

"We need to be able to read the page before we turn the page," Leahy said. "We need to come to a shared understanding of the failures of the recent past."

Even as officials promised a thorough review, government lawyers continued to invoke the state secrets law yesterday in a federal appeals court in San Francisco. That case involves a lawsuit over the CIA's extraordinary rendition program.

Under that program, US operatives seized foreign suspects and handed them over to other countries for questioning.

Some former prisoners subjected to the process contend they were tortured. Proving that in court has been difficult, as evidence they have sought to corroborate their claims has been protected by the president's state secrets privilege.
The American Civil Liberties Union has been urging the Obama administration to drop its state secrets claim.

ACLU executive director Anthony Romero criticized the new administration's handling of the San Francisco case by continuing the legal arguments of the prior administration.

"Candidate Obama ran on a platform that would reform the abuse of state secrets, but President Obama's Justice Department has disappointingly reneged on that important civil liberties issue," Romero said in a statement.

© Copyright 2009 Globe Newspaper Company.